

Wage and Hour Division, Labor

§ 541.501

(b) In Puerto Rico, the Virgin Islands, and American Samoa the second proviso of § 541.3(e) applies to those “professional” employees (other than employees of the Federal government) who are compensated on a salary or fee basis of not less than \$200 per week.

[40 FR 7093, Feb. 19, 1975]

EFFECTIVE DATE NOTE: Section 541.315 was revised at 46 FR 3015, Jan. 13, 1981. In accordance with the President’s Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of § 541.315 set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

§ 541.315 Special proviso for high salaried professional employees.

(a) Except as otherwise noted in paragraph (b) of this section, the definition of “professional” contains a special proviso for employees who are compensated on a salary or fee basis at a rate of at least \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983, exclusive of board, lodging, or other facilities. Under this proviso, the requirements for exemption in § 541.3 (a) through (e) will be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgment, or consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the “learned” professions or in an “artistic” profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test the employee’s qualifications in detail under § 541.3 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa the second proviso of § 541.3(e) applies to those “professional” employees (other than employees of the Federal Government) who are compensated on a salary or fee basis of not less than \$260 per week beginning February 13, 1981 and \$285 per week beginning February 13, 1983.

EMPLOYEE EMPLOYED IN THE CAPACITY OF OUTSIDE SALESMAN

§ 541.500 Definition of “outside salesman.”

Section 541.5 defines the term “outside salesman” as follows: The term “employee employed * * * in the capacity of outside salesman” in section 13(a)(1) of the Act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer’s place or places of business in:

(1) Making sales within the meaning of section 3(k) of the Act; or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a) (1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employers: *Provided*, That work performed incidental to and in conjunction with the employee’s own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.5 requires that the employee be engaged in: (1) Making sales within the meaning of section 3(k) of the Act, or (2) obtaining orders or contracts for services or for the use of facilities.

(b) Generally speaking, the divisions have interpreted section 3(k) of the Act to include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Thus sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of section 3(k). (Section 3(k) of the Act states that “sale” or “sell” includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.)